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SUPREME COURT OF THE UNITED STATES

No. [redacted]68 October Term, [redacted]1969

HARRY LAIKIND,

Appellant,

vs.

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellee.

BRIEF IN OPPOSITION TO DISMISS OR AFFIRM.

Victor Konow,
A Member of the Bar of the Supreme Court of the United States,
Counsel, at the offices of Edward Pious,
261 Broadway,
New York, N. Y. 10007.

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POINT I

A HEARING ON REMAND BEFORE THE SURROGATE, AS SUGGESTED BY THE ATTORNEY GENERAL, MEANS ACCEPTANCE OF CONSTITUTIONAL VALIDITY.

The Court of Appeals remanded this matter to the surrogate upon a finding of constitutional validity. Had the ruling been otherwise, a remand would have been unnecessary. A letter of election to proceed here only was sent to this Court and the Attorney General on August 6, 1968. (Exh. A-OPP. in appendix).

The motion for rehearing was premised upon conditions arising subsequent to the judgment of the Court of Appeals and upon a different provision of the Constitution. It is as though there are two appeals before this Court in one matter.

POINT II

THE AMENDMENT TO SCPA 2218, DIVESTED AND RELEASED FROM ITS SUBDIVS. 2 AND 3, IS VALID, CONSTITUTIONALLY.

The treaty, (TIAS 6503), as an instrument of international policy, is the product of a change in concepts between two dynamic systems of government. Keyed to it are amendments to the Code of Federal Regulations, in effect June 28, 1968, (Appendix, Exh. A, Supplement to Jurisdictional Statement), and to SCPA 2218, in effect June 22, 1968, (Appendix, Exh. 1, Jurisdictional Statement).

It is a new door framed by a new amendment to the Treasury Regulation, hinged with a new amendment to SCPA 2218 whose old bolts (subdivs. 2 and 3), still are in place.

The amendment to the statute, when it speaks for itself, makes sense. It then becomes a sounding board for the Treasury Regulation and the treaty in consonance with present day international motivations, considerations and directions. Attached to the old, it loses its resonance by continuing a confusing statutory pattern of encouragement towards animadversions at state levels of expedience, rather than national planes of long term experience, on those occasions when Russia acts in a manner contrary to the popular feelings of the moment.

The words, "Unless prohibited by law", as used in Art. 10, subdiv. 3, (Appendix, Exh. B, Supplement to Jurisdictional Statement), may refer only to United States Laws or Regulations

specifically enacted or promulgated to fluctuate with the ebb and flow of international relations.

A legal prohibition affecting international agreements, for international recognition and acceptance, may be enacted or promulgated by the contracting parties only. This is significant in our relations with Russia. Though all members of the United Nations are ipso facto parties to the Statute of the International Court of Justice annexed to the Charter of the United Nations (art. 93, UN Charter), Russia, is not one of those countries who have accepted the compulsory jurisdiction of the International Court of Justice pursuant to art. 36 of the Statute of the Court (59 Stat. 1055; TS 993).

A practical example is our treaty of friendship, commerce, and navigation with China, (63 Stat. 1299; TIAS 1871), which our Department of State presently considers to be suspended with respect to areas of China not controlled by the National Government of the Republic of China. In these circumstances, "Red" China, is on the proscribed list of the Treasury Regulation.

Should states, separately, be allowed to enact statutory prohibitions, the diversity of enactments would be such, that national hegemony would be lost to them in international affairs. A state may "ride" with the treaty but not "fight" it.

The same Art. 10 empowers the

states, in making distribution, with a discretionary right to require, (a) a power of attorney or other authorization, (b) proof of the receipt of the money or property by the alien national, and (c) where such proof is lacking, return of the money or property. This then, is the limit of state power in the treaty over a Russian national's funds.

Literal impediments to treaty fulfillment, according to Associate Judge Burke of our State Court of Appeals in Eck v. Arab Airlines, Inc., 15 New York 2d 53, 60, are "at odds with the tenor of the document.", depriving "it of the force it was intended to have.", as a whole. So also, statutory prohibitions enacted by the states would have the same effect as an Act of State by applying themselves

to the acts of other governments.

The treaty's "extraordinary" protocols, which provide, 1. a right of notification to the U. S. Consul of a national's arrest or detention within one to three days after the occurrence of the event, 2. a right to visit and communicate with a national arrested or otherwise detained in custody within two to four days after such action is taken; and 3. a continuing right of visitation and communication with such national whether arrested, otherwise detained or serving a prison sentence; are not unrelated to Art. 10.

On July 30, 1965, the Senate Committee on (F. R.), at a "closed" hearing, heard the protocols evaluated in these words:

Chairman

P. 1

"It is the committee's understanding - - - that this treaty contains certain extraordinary provisions for the protection of American citizens - - -."

Secretary of State

P. 18

"Because we value so highly the protection of individual rights, the Convention's provisions on notification and access have particular significance.

The U.S.S.R. - - - never before (has) given so specific a guarantee on access."

Chairman

P. 32

"- - -(Y)ou have been concerned about - - - the increasing number of Americans going to the Soviet Union?"

Secretary of State

"That is correct - - - our responsibilities for offering them protection have been growing rapidly."

The measure of principal released to Russian nationals is weighed by our government in the principle of protection received by our nationals in Soviet territories, not by any actual monetary reciprocity.

Russia's 2,287,000 residents in the U. S.; 689,000 of whom were born abroad and the balance locally, either of alien or mixed parentage, are the resevoir for the vast accumulation of funds now in restraint. There is no balanced counterpart in the U.S.S.R. (Statistical Abstract of the United States, 89th Edition, June 1968, U.S. Department of Commerce, No. 33, p. 31, Source, Department of Commerce, Bureau of the Census, Vol. 1, 1960.)

The treaty should work with consistent regularity if permitted to func-

tion in the same manner as Japan's Convention Art. 18, which is almost identical with Art. 10 here. (15 UST 768; TIAS 5602; 518 UNTS 179). Funds due Japanese nationals are not subject to statutory restraint. Why then, in almost identical situations, are Russian nationals required to submit to the double standard of making continuous applications for permission to apply for licenses? A showing by one Russian of benefit, use and control should be sufficient for all; and, even that, is not a necessary requisite in the light of the treaty.

In substance, an additive (such as the amendment is set out to be by the Attorney General) which adheres to archaic, inner implanted, deeply rooted rancors (such as are implicit in the

motivations for the statute's first enactment) will serve, not master, its parent, and; unless there is a cutting away from the old, will become imbued with many, if not most, of its parental shortcomings.

Dated: April 21, 1969.

Respectfully submitted,

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A Member of the Bar of
the Supreme Court of
the United States,
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EXHIBIT A - OPP.

EDWARD PIOUS
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-
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261 Broadway
New York, N.Y.
10007

August 6, 1968

Supreme Court of the United States
Washington, District of Columbia

Re: Laikind

Gentlemen:

For informational purposes enclosed is Notice of Appeal, Request to Certify and unrevised copies of the Opinions of the Court of Appeals of the State of New York.

An election being involved between proceeding in this Court upon the theory of statutory unconstitutionality as applied here or before the Surrogate as suggested in the Majority Opinion of the Court of Appeals of

the State of New York pursuant to that Court's decision "(T)hat the impoundding of the funds was not unconstitutional", appellant elects to proceed with his appeal in this Court and not before the Surrogate.

Yours very truly,

s/ Edward Pious

EDWARD PIOUS

EP:rw
Encs. 2

CC: Court of Appeals of the
State of New York

Surrogate's Court of the
State of New York - Kings County

Attorney General of the State
of New York